

1 supercedes the PFS, that includes both the PFS  
2 and the FCC requirement. It's a complicated  
3 tariff that's out there. If you have it, show  
4 it to the witness if you want to question, but  
5 I'm not sure that this has anything to do with  
6 this particular the pre-filing. In particular,  
7 the pre-filing changes one aspect and one aspect  
8 only of the PFS, and that is to expand the  
9 current limitation, which is a four-line or less  
10 limitation, to 18. That is the only change.

11 MR. ROLAND: Thank you.

12 MS. THORN: And I think it's kind  
13 of confusing right now. The witness isn't an  
14 expert in PFS.

15 MR. ROLAND: And the reason I  
16 think it's important is because the pre-filing  
17 makes reference to continuing providing service  
18 in a manner comparable to under the PFS with  
19 certain expansions, and I'm only trying to  
20 clarify under what circumstances the company now  
21 provides the UNE-P and, Pat, let me try this: --

22 MS. THORN: Can I ask you exactly  
23 where you're reading from. If you're reading  
24 from the the pre-filing on page 2, it says, The  
25 term of this plan, notwithstanding any change in

1           its obligation under federal law, Verizon  
2           commits to modify its PFS commitment such that  
3           it will offer UNE-P to competitive local  
4           customers defined as business customers with 18  
5           lines or less on the same pricing and duration  
6           terms as the law serving its residential  
7           customers, and that I believe is the only  
8           reference to it. Now --

9           BY MR. ROLAND:

10       Q.   And my clarification question is, does that 18-  
11           line limit apply statewide or only to the New  
12           York City central offices?

13                       MR. GARZILLO: Maybe I can help.

14           I have a copy of Appendix B and here's the  
15           offices. There are three, one in Buffalo, so  
16           it's outside New York City, covers mid-Nassau-  
17           Floral Park. I mean these are the list of  
18           offices where the limitation applies.

19       Q.   But wasn't the prefiling statement intended to  
20           be a commitment on the part of the company to  
21           offer service even where not required under  
22           federal law?

23                       MS. THORN: Again, I'm going to  
24           object to questioning on the PFS. That is not  
25           at issue in this case.

1 MS. LEE: It does seem that the  
2 Joint Proposal does talk about Verizon proposing  
3 to meet the PFS commitment, so it seems to me  
4 that the line of questioning does make some  
5 sense to figure out what that actually means.  
6 So I will allow the questioning.

7 MR. ROLAND: Yes. Thank you.

8 MR. GARZILLO: I just keep  
9 reiterating Appendix B covers the whole state,  
10 the offices within it that are excluded and the  
11 exclusion would be we went from four lines to  
12 18.

13 Q. So in the company's view, the FCC rule about  
14 limiting UNE-Ps to three lines or less in  
15 certain -- certain offices and certain density  
16 zones trumped the commitment in the prefiling  
17 statement that UNE-P would be available to  
18 business customers throughout the state except  
19 in the New York City offices without limit on  
20 lines.

21 MS. THORN: Again, I'm going to  
22 object to asking him about the PFS. He's asking  
23 him about the modification and he's told you  
24 what the modification means. Asking him other  
25 questions about what the PFS meant or didn't

1 mean, I think, is outside the scope of the  
2 testimony, and frankly, is adding confusion.

3 MR. ROLAND: Well, frankly, I  
4 disagree. We ought to know and be sure where  
5 UNE-P is going to be available to business and  
6 residential customers during the next two years,  
7 and to the extent there's any confusion it  
8 simply makes sense to clear it up and get it on  
9 the record so we know.

10 MS. LEE: I think that this seems  
11 relevant to the discussion. I think what Mr.  
12 Roland and is trying to do is clarify Paragraph  
13 B in the Joint Proposal as to exactly what that  
14 means as to the offering of UNE-P, so if the  
15 panel will make a clear statement about where  
16 UNE-P will be offered, that will be cleared up.

17 MS. THORN: He can answer that  
18 question. He can answer that question. He  
19 cannot answer what the PFS otherwise required.  
20 This question, I don't think, is outside the  
21 scope.

22 MS. LEE: I understand the  
23 question to be an amplification by the panel  
24 relating to Paragraph B? Is that correct?

25 MR. ROLAND; Yes.

1 MS. LEE: The panel can take a  
2 few minutes to answer that question as to what  
3 does the proposal mean under Paragraph C. That  
4 would be helpful if you could answer that  
5 question.

6 (Short pause).

7 Is the panel prepared to answer  
8 the question?

9 MR. GARZILLO: Yes, I am. Keith,  
10 maybe I can help by referring to the tariff. In  
11 the tariff, Section 5 of PSC Number 10, the  
12 subsection 12.3.2 explains what UNE-P in central  
13 offices are available and what types of  
14 customers and lists the port availability that  
15 would -- and that is really governing of the  
16 UNE-P, and the list goes from Analog, Basic,  
17 ISDN primary rate. The only exception is then  
18 found in the next subsection which is 12.3.3  
19 which says in Appendix B, UNE-P will not be  
20 provided in connection with combinations  
21 involving the following line port types, and  
22 it's primary ISDN port, DS1, DID, excuse me,  
23 DOD/PBX port interface and coin ports. The only  
24 thing that changes from PFS is the section of  
25 section 5, 12.3-3 the line limitation going from

1           4 to 18. Then there is another section which is  
2           subsection 3.4 which had Appendix C. That one  
3           has been made dormant. That was the one that  
4           suggested that you had to have two or more  
5           collocators. That's not in play as far as the  
6           period in the pre-filing. So I think if you  
7           looked at the tariff that would explain we've  
8           done and what the requirements are of this.

9       Q.   Thank you. So if Appendix C is not in play,  
10           that means in the company's view that UNE-P will  
11           be available for business POTS service in all  
12           central offices in the state with a limit of 18  
13           lines per customer?

14                       MR. GARZILLO: It -- surprisingly  
15           enough, most of the offices that are listed in  
16           Appendix C are also in Appendix D.

17                       MS. LEE: Is the answer to the  
18           question yes or no?

19                       MR. GARZILLO: Yes. The answer  
20           is yes.

21       Q.   During the term of the the pre-filing, the  
22           residential UNE-P will be available in every  
23           central office in the state?

24                       MR. GARZILLO: Excuse me. Can  
25           you repeat the question?

1 Q. There will be no limitations on the availability  
2 for residential UNE-P anywhere in the state  
3 during the the pre-filing?

4 (Mr. Garzillo shakes head.)

5 MS. LEE: Would you repeat the  
6 answer.

7 MR. GARZILLO: No.

8 Q. In earlier discussion, there was an indication  
9 that the four-year or six-year transition  
10 period, at least the four-year period would come  
11 to an end at some point during the term of the  
12 plan. Am I correct that under the prefiling  
13 statement at the end of the transition period  
14 there would be a shift of the price for the  
15 UNE-P from one level up towards the retail --  
16 I'm sorry, the wholesale discount level; is that  
17 correct?

18 MS. THORN: Again, I'm going to  
19 object to questioning on the PFS in and of  
20 itself. That is not before the Commission at  
21 this time, and improper for the panel to be  
22 asked these questions.

23 MS. LEE: Is the question  
24 relating to the pricing provisions?

25 MR. ROLAND: Yes, your Honor.

1 MS. LEE: Did the panel not  
2 answer that when they said the price would hold  
3 for two years?

4 MR. ROLAND: Want to be sure that  
5 that is consistent with a situation where the  
6 transition periods or at least the four-year  
7 transition period might end at some point during  
8 the the pre-filing and perhaps otherwise would  
9 be changes. Even if the four-year transition,  
10 the pre-filing transition period may end during  
11 the two years of this coming plan, will the  
12 company nonetheless hold the UNE-P price  
13 constant during the term of the plan?

14 MR. GARZILLO: I think I answered  
15 before yes.

16 Q. The plan talks about downward pricing  
17 flexibility for the company during the plan and  
18 there's an indication that the downward limit  
19 will be at incremental cost.

20 MS. LEE: Page reference, please,  
21 Mr. Roland. Is that on page 11 at the top?

22 MR. ROLAND: I believe it's on 11  
23 at the top, yes, your Honor.

24 MS. LEE: O.K.

25 Q. Now, with respect to the services which the

1           company is going to be offering, will the TELRIC  
2           rates available for the comparable UNEs for the  
3           service being offered by the company be equal to  
4           the incremental cost?

5                       MS. THORN: When you inject  
6           comparable UNE, I don't understand what that  
7           means, Mr. Roland. Either it's UNE or it's  
8           not.

9    Q.    In offering services to the public, does the  
10   come pain utilize elements which are comparable  
11   to unbundled network elements provided to  
12   competitors?

13                   MR. GARZILLO: We use elements  
14   but the cost basis may be different.

15   Q.    So that, in reviewing an incremental cost study  
16   or in producing an incremental cost study, the  
17   company would not necessarily use as the  
18   starting point for incremental cost the TELRIC  
19   rate that is charged to competitors for a UNE  
20   comparable to an element being used by the  
21   company?

22                   MR. GARZILLO: What the company  
23   would use is a little standard practice of using  
24   TSLRIC as the basis for developing a UNE cost  
25   for a service. TELRIC is the basis for

1 developing costs for an element.

2 MS. LEE: Would you spell the  
3 acronym for the reporter, please.

4 MR. CROTTY: T-S-L-R-I-C.

5 Q. Also on the top of page 11, there's an  
6 indication that usage offerings must pass an  
7 imputation standard. Is there a particular  
8 formula or standard that the company will use  
9 with respect to this imputation?

10 MR. GARZILLO: Well, we will rely  
11 on our standard imputation practices in the  
12 UNEs, as it applies to imputation, whatever is  
13 their available cost.

14 Q. All right. It's interesting that it says usage  
15 offerings must past the imputation standard.  
16 Will non-usage offerings have to pass an  
17 imputation standard?

18 MR. GARZILLO: No.

19 MR. ROLAND: That's all I have,  
20 your Honor. Thank you very much.

21 MS. LEE: Thank you very much. I  
22 believe there's further cross-examination of  
23 this panel? Would you identify yourself for the  
24 reporter, please.

25 MR. HAZZARD: Yes, good morning.

1 Michael Hazzard of Kelley Drye. BY MR. HAZZARD:

2 Q. If you refer to the February 11th panel  
3 testimony at page 5, the panel describes the  
4 enrollment in the plan and its public policy  
5 rationale. In my review of the testimony, I  
6 didn't see any testimony of what occurs after  
7 the conclusion of the plan. Does the panel have  
8 any thoughts on what happens at the expiration  
9 of the plan?

10 MR. CROTTY: With regard to the  
11 rates, the rates that are contained in Appendix  
12 A would continue.

13 Q. And how long would they continue?

14 MR. CROTTY: Until new rates were  
15 established.

16 Q. Through a --

17 MR. CROTTY: Through a process  
18 that would be how the rates were established in  
19 the first instance.

20 Q. Can you give me an example.

21 MR. CROTTY: Well, you had Judge  
22 Linsider worked on this for several years. I  
23 would assume we would go through the same  
24 process to change the rates.

25 MR. HAZZARD: Thank you. I have

1 no further questions.

2 MS. LEE: Thank you. Are there  
3 any other parties who would like to question  
4 this panel?

5 Seeing none, I would declare this  
6 panel excused. Thank you very much.

7 (The panel was excused.)

8 The next panel I would like to  
9 call is staff, but before I do that I'd like to  
10 ask if there are any other parties who would  
11 like to make appearances for the record. Please  
12 speak in your microphone.

13 MS. BURNS: For the Attorney  
14 General's office, Mary Ellen Burns, B-u-r-n-s,  
15 and Acevito.

16 MS. LEE: Thank you very much.  
17 Are there any other appearances for the record?

18 Seeing none, if staff could at  
19 this time take the stand.

20 DENNIS TARATUS, DANIEL MARTIN, CHARLES  
21 DICKSON, WAYNE BRINDLEY, and JAMES

22 MITCHELL  
23 called as witnesses on behalf of the Department  
24 of Public Service, each having been duly sworn,  
25 were examined and testified as follows:

1                   MR. MCGOWAN: Could the panel  
2 members please identify themselves for the  
3 reporter.

4                   MR. TARATUS: Dennis Taratus.

5                   MR. MARTIN: Daniel Martin.

6                   MR. DICKSON: Charles Dickson.

7                   MR. BRINDLEY: Wayne Brindley.

8                   MR. MITCHELL: James Mitchell.

9                   EXAMINATION BY MR. MCGOWAN:

10       Q.       O.K. And do you have before you the prepared  
11 testimony of the staff panel in this case  
12 consisting of 83 pages of questions and answers?

13                   MR. DICKSON: We do.

14       Q.       Are there any corections or modifications to  
15 that testimony?

16                   MR. DICKSON: None. Not at the  
17 moment.

18       Q.       O.K. And this testimony was prepared by you?

19                   MR. TARATUS: Yes.

20                   MR. MCGOWAN: O.K. So I would  
21 move that this be entered into the record as if  
22 provided orally today.

23                   MS. LEE: Do you have a copy for  
24 the reporter?

25                   MR. MCGOWAN: Yes.

1 MS. LEE: The pre-filed testimony  
2 prepared by staff will be admitted into the  
3 record.

4 BY MR. MCGOWAN:

5 Q. And there are several exhibits attached to your  
6 testimony, is that correct?

7 MR. DICKSON: That's correct.

8 Q. And were they prepared by the panel or under the  
9 panel's supervision?

10 MR. DICKSON: Yes, they were.

11 Q. And can we just identify, I believe there are  
12 four exhibits. The first exhibit is marked  
13 Panel 1.

14 MR. BRINDLEY: There are five  
15 exhibits.

16 Q. Five. O.K. The first is marked Panel 1.

17 MR. BRINDLEY: That's correct.

18 Q. And that consists of the credentials of the  
19 panel members?

20 MR. BRINDLEY: That's correct.

21 MR. MCGOWAN: I would move for  
22 that being marked for identification.

23 MS. LEE: Does the reporter have  
24 a copy of this?

25 MR. MCGOWAN: Well, yes, but let

1 me provide another one. Do you have copies?

2 MS. LEE: What you're giving the  
3 reporter is staff exhibit marked Panel 1 which  
4 is the description of who the panel members  
5 are.

6 MR. MCGOWAN: Correct.

7 MS. LEE: That would be marked  
8 for identification as Exhibit Number 6 -- I'm  
9 sorry, Exhibit Number 8 for identification.

10 MR. MCGOWAN: These are attached  
11 to the staff pre-filed testimony. And then  
12 there is the second exhibit which consists of a  
13 chart of service quality measurements identified  
14 at the top as "Verizon Performance on a  
15 Companywide Basis under the PRP." Is that  
16 marked Panel 2?

17 MS. LEE: I don't have that  
18 attached to my pre-filed.

19 So a one-page document marked  
20 Verizon Performance on a Companywide Basis under  
21 the PRP noted at the top as Exhibit Panel-2,  
22 marked for identification as Exhibit Number 9.

23 MR. MCGOWAN: And then could I  
24 ask the panel to identify the third exhibit of  
25 this panel testimony which does not have an

1           indication at the top or on the margin, so I  
2           want to make sure it's clear.

3                       MR. DICKSON: This is a multi-  
4           page financial presentation beginning with  
5           Verizon New York Range of Intrastate Average  
6           Returns, that should be marked as Panel 3. That  
7           first page should be marked as Schedule A.  
8           That's followed by a three-page summary or  
9           Explanation of Staff's Adjustments, which should  
10          be marked as Schedule B, pages 1 of 3 through 3  
11          of 3.

12                      MR. MCGOWAN: I'm going to hand a  
13          copy of this to the reporter with my notations  
14          at the top which identify these as the witness  
15          has just indicated.

16                      MS. LEE: Let me just make sure I  
17          have it. The first page says on the top PRP  
18          Equity Returns Comparison of Actual, Ratemaking,  
19          Normalized and Estimated Returns, at the top of  
20          the exhibit?

21                      MR. DICKSON: That's another.

22                      MS. LEE: O.K. Marked for  
23          identification as Exhibit Number 10, Schedule A,  
24          says at the top Comparison of Actual, Ratemaking  
25          Normalized and Estimated Returns. I don't

1 believe this is the same thing as Mr. McGowan  
2 just gave the reporter.

3 MR. MCGOWAN: No, it's not.

4 MS. LEE: Mr. McGowan, do you  
5 have another copy? Schedule A says, Range of  
6 Intrastate Average Returns 2002 to 2003, in  
7 millions of dollars.

8 MR. GARZILLO: Yes, your Honor,  
9 that's Exhibit 8.

10 MR. DICKSON: Yes, your Honor,  
11 that's Staff Panel 3.

12 MS. LEE: So Exhibit Number 10 is  
13 a four-page document, of which the first page is  
14 Schedule A, and it's a chart that says Range of  
15 Intrastate Returns 2002-2003 Millions of  
16 Dollars, and then there's a three-page exhibit  
17 marked Schedule B that has an explanation of  
18 staff adjustments, is that correct?

19 MR. DICKSON: That's correct.

20 MS. LEE: That will be marked for  
21 identification as Exhibit Number 10.

22 MR. MCGOWAN: O.K. And the next  
23 exhibit is marked Panel 4 and at the top reads,  
24 Verizon New York Forecasted Income Statement and  
25 Rate of Return Intrastate, and that consists of

1 Schedule A and B, is that correct?

2 MR. DICKSON: That is correct.

3 MS. LEE: That was marked for  
4 identification as Exhibit Number 11, Forecasted  
5 Income Statement and Rate of Return, a two-page  
6 document.

7 MR. MCGOWAN: And then finally,  
8 the fifth panel exhibit is marked on the side,  
9 on the top, Verizon New York PRP Equity Returns  
10 Comparison of Actual, Ratemaking,  
11 Normalized and Estimated Returns for the 12  
12 months ending August 31st. It does not have an  
13 indication on it, so that will be Staff Panel  
14 5. Is that correct?

15 MR. DICKSON: That's correct.

16 MS. LEE: The one-page document  
17 that Mr. McGowan referred to titled, "PRP Equity  
18 Returns Comparison of Actual, Ratemaking,  
19 Normalized and Estimated Returns for the 12  
20 months ended August 31st," will be marked for  
21 identification as Exhibit Number 12.

22 Does that conclude the exhibits?

23 MR. MCGOWAN: Yes.

24 BY MR. MCGOWAN:

25 Q. Let me just ask the panel: All of those

1 exhibits were prepared by you or under your  
2 supervision, is that correct?

3 MR. DICKSON: That's correct.

4 MS. LEE: Now, I understand that  
5 the panel is available by cross-examination.

6 MS. LEE: Can I start by asking  
7 the panel one question. I believe this panel  
8 was here when the Verizon panel was questioned  
9 by Mr. Roland about the Paragraph C in the rate  
10 proposal?

11 MR. DICKSON: That's correct.

12 MS. LEE: That you were here. I  
13 just wonder if you could answer that same  
14 question about your understanding about what  
15 that paragraph means in terms of the  
16 availability of UNE-P.

17 MR. MARTIN: Paragraph B simply  
18 changes the PFS and the current Verizon tariff  
19 and raises the limitation that's currently in  
20 that tariff in the four-year central offices  
21 where business UNE-P is restricted to business  
22 customers with three or less lines, raises the  
23 limitation to 18 lines. That's all it does.

24 MS. HELMER: Can I ask a  
25 question?

1 MS. LEE: Sure.

2 MS. HELMER: And just to follow  
3 up, the current application of UNE-P outside of  
4 those specific areas would remain the same?

5 MR. MARTIN: Yes, and there are  
6 no restrictions outside.

7 MR. MCGOWAN: Now, your Honor, if  
8 I could before making the panel available for  
9 cross-examination, I would like to ask the panel  
10 if they have anything to add, to clarify in  
11 light of some testimony that was submitted, I  
12 believe yesterday? I believe it's Choice One.

13 MS. LEE: I believe Choice One  
14 filed testimony, prefiled testimony Saturday  
15 night, in which they raised 13 points for  
16 clarification. I would ask if the panel has any  
17 comments regarding that testimony.

18 MR. MITCHELL: No.

19 MR. MCGOWAN: Thank you, your  
20 Honor.

21 BY MR. MCGOWAN:

22 Q. The first question concerns PAP, so let me ask  
23 the panel, is it your understanding that the  
24 Joint Proposal -- does the Joint Proposal change  
25 at all the existing application of the

1 Performance Assurance Plan?

2 MR. MARTIN: No, the Joint  
3 Proposal does not affect the PAP at all.

4 Q. The second issue concerns the hot cut charges.  
5 Let me ask the panel, does the credit implicit  
6 in the Joint Proposal, the \$35 of non-recurring  
7 charge for hot cuts, apply to all non-recurring  
8 charges, hot cut charges?

9 MR. MARTIN: The \$35 charge is  
10 inclusive of the rate elements which are service  
11 order charge and central office wiring charge  
12 and provision, so \$35 gets you all of those.

13 Q. Next concerns the IDLC review. Is it your  
14 understanding that the review that is  
15 contemplated in the Joint Proposal, the task  
16 force, the elimination of bottlenecks, is it  
17 your understanding that that task force will  
18 include a review of the feasibility of IDLC?

19 MR. MARTIN: I'm not sure if the  
20 plan makes that exclusive. However, it would  
21 seem reasonable and logical to, you know,  
22 undertake this review within the task force.

23 Q. Is it your understanding that that review would  
24 be conducted during and likely completed prior  
25 to the end of the term of the Joint Proposal?

1 MR. MARTIN: Yes.

2 Q. Finally, with respect to service quality, is it  
3 your understanding that rebates under the retail  
4 service quality plan that is contained in the  
5 Joint Proposal are paid to Verizon end users as  
6 well as to wholesale customers?

7 MR. TARATUS: That's our  
8 understanding.

9 Q. And could you explain how rebates to wholesale  
10 customers would operate specifically with  
11 respect to the \$50 limitation that's contained  
12 in the Joint Proposal?

13 MR. TARATUS: The Joint Proposal  
14 at page 9 makes reference to the payment of  
15 rebates for failure to achieve certain  
16 objectives, specifically trouble, out of service  
17 or installation performance, and those payments  
18 would be made on a per occurrence basis to  
19 affected customers. The Joint Proposal also  
20 goes on to indicate that in no case will a  
21 credit to any one affected customer exceed \$50  
22 per occurrence in that measurement period. The  
23 Joint Proposal is not meant to be construed as  
24 to limit the credit that would be available to a  
25 competitive local exchange carrier to \$50. It

1 is not a per account credit in that instance.  
2 It is a per occurrence credit.

3 MR. MCGOWAN: Thank you. No  
4 further clarifying questions. The panel is  
5 available for cross.

6 MS. LEE: Does anyone else have  
7 questions of this panel?. Mr. Roland, please.

8 MR. ROLAND: May I ask for a two-  
9 minute recess. I'd like to confer with Counsel.

10 MS. LEE: Sure. Take a three-  
11 minute recess.

12 (A short recess was taken.)

13 MS. LEE: Let's go back on the  
14 record. Mr. Roland, do you have some questions  
15 of this panel?

16 MR. ROLAND: Yes, very briefly,  
17 your Honor. Thank you.

18 BY MR. ROLAND:

19 Q. Mr. Martin, in your answer before, the  
20 availability of the UNE platform for POTS  
21 business customers, you made reference to the 30  
22 central offices. Now, are those the New York  
23 City central offices with two collocators that  
24 you were referring to?

25 MR. MARTIN: I believe they are.

1 I mean if the tariff is available, we can clear  
2 this up quite readily.

3 Q. But it is your understanding, though, that the  
4 limit on 18 lines for UNE-P POTS customers is  
5 only in the New York City central offices where  
6 there are two collocators.

7 MR. MARTIN: Yes.

8 Q. And that for every other central office in the  
9 state except those New York City central offices  
10 where there are two collocators, there is no  
11 limit on the number of UNE-P business POTS  
12 lines?.

13 MR. MARTIN: Can I have the  
14 question again? I may be confused. Is there a  
15 copy of the tariff available?

16 MS. THORN: I think we have one.

17 Q. Well, what I want to be sure is, I know what the  
18 company's tariff says, and there's also some  
19 testimony that limits are not being enforced,  
20 even though they may or may not be authorized by  
21 the tariff, so I'm really focusing on what  
22 staff's understanding is independent of what the  
23 company's tariff says in terms of whether UNE-P  
24 business service is available statewide,  
25 business POTS, except for those in New York City

1 central collocator offices without line limit,  
2 and let me break this down piece by piece.  
3 Under the pre-filing statement, except for those  
4 New York City central offices there was no limit  
5 in the number of lines for business POTS where  
6 business POTS UNE-P would be available. I guess  
7 wouldn't that be correct?

8 MR. MARTIN: Well, I don't think  
9 so. I think the restriction applied in the top  
10 50 MSAs, and that included parts of Buffalo as  
11 well, so that's not New York City.

12 Q. But that was an FCC restriction.

13 MR. MARTIN: That was the four-  
14 line restriction.

15 Q. But under the pre-filed statement, there is no  
16 reference to that FCC restriction.

17 MR. MARTIN: That's correct.

18 Q. So is it the staff's view that the restriction  
19 required the company to provide UNE-P even if  
20 the FCC rules would be more restrictive?

21 MR. MARTIN: That's correct. It  
22 was the one way around.

23 Q. So if you put that together, if the prefiling  
24 statement had no limit on UNE in business  
25 outside of those New York City central offices,

1           the fact that the FCC came out with a three-line  
2           limit would not impact the company's obligation  
3           under the prefiling statement to offer UNE-P  
4           business POTS without line limitation outside  
5           those New York City central offices?

6                       MR. MARTIN: I think that's  
7           correct, but could you rephrase that question  
8           for me.

9    Q.    Sure. When you put together the prefiling  
10          statement, isn't it true that under the  
11          prefiling statement that the FCC's limitation of  
12          three lines in certain central offices in the  
13          top 50 SMSAs, would not be applicable because  
14          the prefiling statement would trump any more  
15          restrictive FCC rule?

16                     MR. MARTIN: Yes.

17   Q.    So putting that together, under the prefiling  
18          statement and under the plan going forward there  
19          would be no limit in the number of UNE-P  
20          business POTS lines in any central office in the  
21          state except for those specific two collocator  
22          central offices in New York City.

23                     MR. MARTIN: Yes.

24   Q.    And in those two collocator offices in New York  
25          City, the limit is 18 business POTS?

1 MR. MARTIN: That's correct.

2 Q. Now, do you know exactly today how many of those  
3 New York City central offices are two collocator  
4 central offices?

5 MR. MARTIN: No, I don't.

6 Q. Will that number change over time, or is it  
7 fixed at some point in time?

8 MR. MARTIN: I believe it was  
9 fixed at a point in time.

10 Q. At one point there were 17 in the tariff. Was  
11 that tariff subsequently amended, do you know?

12 MR. MARTIN: I do not know.

13 Q. And, did the prefiling statement contemplate  
14 that the number would be changing from time to  
15 time and may be different from the number of  
16 central offices affected by this as of the start  
17 of the transition period?

18 MR. MARTIN: My recollection is  
19 that it was fixed in point of time, but I don't  
20 recall what point in time it was fixed.

21 Q. In staff's fiscal analysis of the plan and the  
22 explanation of staff adjustments, there was an  
23 allocation of 25 percent of UNE losses to  
24 Verizon long distance. Can you tell me why that  
25 was done?

1                   MR. DICKSON: In terms of  
2                   responsibility for these losses, it's our view  
3                   that not all of them should be considered as  
4                   part of the intrastate revenue requirement for  
5                   Verizon. I mean essentially they were  
6                   conditions with the opening of the market, the  
7                   opening of the company's network and the  
8                   incurrence of these losses were conditions for  
9                   the company to enter into the long distance  
10                  market.

11                 MR. ROLAND: Thank you. That's  
12                  all I have, your Honor. Thank you for that.

13                 MS. LEE: Thank you. Is there  
14                  any other questioning of this panel? Mr.  
15                  Fitzgerald?

16                 MR. FITZGERALD: I have no  
17                  questions.

18                 MS. LEE: Thank you very much.  
19                  The panel is excused.

20                 My understanding is there are two  
21                  other pieces of testimony, one from Choice One  
22                  and one from Pulp?

23                 MR. WILES: Yes.

24                 MS. LEE: Are there any parties  
25                  who want to cross-examine any of those

1 witnesses, either Choice One or Pulp?

2 MR. HAZZARD: There was also a  
3 statement from Z-Tel.

4 MS. LEE: A statement or  
5 testimony?

6 MR. HAZZARD: It's a statement we  
7 would like to put in the record as testimony.

8 MS. LEE: Is it a statement?

9 MR. HAZZARD: No, Mr. Davis will  
10 be examined.

11 MS. LEE: Is there any  
12 cross-examination of those parties by anyone  
13 else? Then I believe -- is it an affidavit, or  
14 how do you want to do it?

15 MR. HAZZARD: Just for the record.

16 MS. LEE: Why don't we start with  
17 Choice One and Z-Tel and then we'll go to Pulp.

18 MR. ROLAND: Your Honor, Choice  
19 One's counsel was not available today. With  
20 your permission, I'm happy to introduce Mr.  
21 Fitts in behalf of Choice One.

22 MS. LEE: Mr. Fitts, would you  
23 please make your appearance.

24 MS. THORN: Are you adopting this  
25 testimony?

1 MS. LEE: Mr. Fitts has his own  
2 testimony that was filed late on Friday and it  
3 will be marked as an exhibit.

4 Let me swear you in as a witness.

5 DAVID FITTS

6 called as a witness on behalf of Choice One,  
7 having been first duly sworn, was examined and  
8 testified as follows:

9 DIRECT EXAMINATION BY MR. ROLAND:

10 Q. Would you please state your name and address for  
11 the record.

12 A. My name is David Fitts. I work for Choice One  
13 Communications. We're located at 100 Chestnut  
14 Street, Rochester, New York 14604.

15 Q. And, Mr. Fitts, do you have in front of you an  
16 18-page document entitled prefiled Direct  
17 Testimony of David A. Fitts on behalf of Choice  
18 One Communications of New York, Inc., regarding  
19 the joint settlement proposal in these  
20 proceedings?

21 A. Yes, I do.

22 Q. Is that your prefiled testimony in this  
23 proceeding?

24 A. Yes, it is.

25 Q. Was that prepared by you or under your